

**ASSEMBLY BILL**

**No. 490**

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**Introduced by Assembly Member Steinberg**  
**(Coauthors: Assembly Members Cohn, Diaz, Lieber, Maldonado,**  
**Mullin, Negrete McLeod, and Vargas)**  
**(Coauthors: Senators Kuehl, Perata, and Romero)**

February 14, 2003

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An act to amend Sections 48645.5, 48850, 49069.5, and 49076 of, to add Sections 48853 and 48853.5 to, the Education Code, and to amend Sections 361, 726, and 16000 of the Welfare and Institutions Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

AB 490, as introduced, Steinberg. Education: foster youth.

(1) Existing law requires a school district to accept for credit any coursework satisfactorily completed by a student while in juvenile court school or in any county or state-operated institution.

This bill would instead require a school district and county office of education to accept for credit full or partial coursework satisfactorily completed by a pupil while attending a public school, juvenile court school, or nonpublic, nonsectarian school or agency.

(2) Existing law requires every county office of education to make available to agencies that place children in licensed children's institutions information on educational options for children residing in licensed children's institutions within its jurisdiction. Existing law requires every agency that places a child in a licensed children's institution to notify the local educational agency at the time a pupil is placed and requires a local educational agency to invite at least one noneducational agency representative that has placement responsibility

for a pupil residing in a licensed children's institution to collaborate with the local educational agency in the monitoring of a placement in a nonpublic, nonsectarian school or agency.

This bill would declare the Legislature's intent to ensure that pupils in foster care and those who are homeless, as defined by specified federal law, have the opportunity to meet the same academic achievement standards to which all pupils are held, are placed in the least restrictive educational program, and have access to the same academic resources and services as all other pupils.

The bill would require pupils placed in licensed children's institutions or foster family homes to attend programs operated by the local educational agency except as provided. The bill would require the parent, guardian, or person holding the right to make educational decisions for the pupil to first consider placement of the pupil in the regular public school before any decision to place the pupil in a juvenile court school and would authorize disputes on the educational placement of the pupil to be brought to the juvenile court for resolution.

The bill would require each local educational agency to designate a staff person as the educational liaison for foster youth who are a ward or dependent child of the court, to ensure the proper placement, enrollment in school, and transfer between schools of foster youth and to assist foster youth when transferring schools or school districts, and would impose various related responsibilities on the liaisons. The bill would require the local educational agency serving a foster youth, at the initial detention placement, or any subsequent change in placement of the foster youth, to allow the foster youth to continue his or her education in the school the youth is currently attending for the duration of the school year, except as provided. The bill would require the State Department of Education and local educational agencies to adopt policies and procedures to ensure that, under certain situations, transportation for a foster youth to and from the school the youth last attended is provided at the request of the liaison.

By imposing these additional duties involving foster youth upon local educational agencies, this bill would impose a state-mandated local program.

(3) Existing law requires a local educational agency with which a pupil in foster care has been most recently enrolled that has been informed of the next educational placement of the pupil to cooperate with the county social service or probation department to, upon request, ensure that the educational and other background record of the pupil,



is transferred to the receiving local educational agency and the foster children services program in a timely manner.

This bill would delete those provisions and, instead, would provide that the timely transfer between schools of pupils in foster care is the responsibility of both the local educational agency and the county social service or probation department. The bill would require the social worker or probation officer, as soon as the social worker or probation officer becomes aware of the need to transfer the pupil between schools, to contact the appropriate person at the pupil's local educational agency regarding the transfer, and would also require the social worker or probation officer to retrieve the appropriate educational information and school records of the pupil and immediately forward them to the pupil's next educational placement. The bill would require the local educational agency upon receiving the transfer request, to, within 2 business days, transfer the pupil and deliver the pupil's educational information and records to the requesting party. By imposing a higher level of service on these local agencies, the bill would impose a state-mandated local program.

(4) Existing law prohibits a school district from permitting access to pupil records to any person without parental consent or without a judicial order, except under certain circumstances, including access by a probation officer or district attorney for the purposes of conducting a criminal investigation, or an investigation regarding the declaration of a person to be a ward of the court, or involving a violation of a condition of probation.

This bill would also authorize a school district to permit access to any social worker for the purpose of conducting a child dependency investigation or preparing a case plan or court report required by law.

(5) Existing law authorizes a court to limit the control exercised over a minor by a parent or guardian in all cases where the minor is adjudged a ward or dependent child of the court and requires a court, if it does limit this control, to appoint a person to make educational decisions for the child.

This bill would authorize a court to resolve any dispute between the person appointed to make educational decisions for the child and the attorney, court-appointed special advocate, care provider, or placing agency of the child regarding the child's educational plan or placement.

(6) This bill would further declare the intent of the Legislature to ensure that a pupil in foster care or who is homeless, as defined by specified federal law, has the opportunity to meet the same academic



achievement standards to which all pupils are held, is placed in the least restrictive educational program, and has access to the same academic resources and services as all other pupils.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 48645.5 of the Education Code is  
2 amended to read:

3 48645.5. Each public school district ~~shall accept for credit any~~  
4 ~~coursework satisfactorily completed by a student while in a~~  
5 ~~juvenile court school or in any county or state-operated institution~~  
6 ~~for dependent or delinquent children and county office of~~  
7 ~~education shall accept for credit full or partial coursework~~  
8 ~~satisfactorily completed by a pupil while attending a public~~  
9 ~~school, juvenile court school, or nonpublic, nonsectarian school~~  
10 ~~or agency. Such~~ The coursework shall be transferred by means of  
11 the standard state transcript. If a ~~student~~ pupil completes the  
12 graduation requirements of his or her school district of residence  
13 while being detained, the school district of residence shall issue to  
14 the ~~student~~ pupil a diploma from the school ~~he or she~~ the pupil last  
15 attended before detention or in the alternative, the county  
16 superintendent of schools may issue the diploma.

17 SEC. 2. Section 48850 of the Education Code is amended to  
18 read:

19 48850. (a) *It is the intent of the Legislature to ensure that all*  
20 *pupils in foster care and those who are homeless as defined by the*  
21 *federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec.*

1 *11301 et seq.) have the opportunity to meet the same challenging*  
 2 *state pupil academic achievement standards to which all pupils are*  
 3 *held. In fulfilling their responsibilities to these pupils, educators,*  
 4 *placing agencies, care providers, advocates, and the juvenile*  
 5 *courts shall work together to ensure that each pupil is placed in the*  
 6 *least restrictive educational program, and has access to the same*  
 7 *academic resources and services that are available to all pupils.*  
 8 *In all instances, educational and school placement decisions must*  
 9 *be based on the best interests of the child.*

10 (b) Every county office of education shall make available to  
 11 agencies that place children in licensed children's institutions  
 12 information on educational options for children residing in  
 13 licensed children's institutions within the jurisdiction of the  
 14 county office of education for use by the placing agencies in  
 15 assisting parents and foster children to choose educational  
 16 placements.

17 ~~(b)~~

18 (c) For purposes of individuals with exceptional needs residing  
 19 in licensed children's institutions, making a copy of the annual  
 20 service plan, prepared pursuant to subdivision (g) of Section  
 21 56205, available to those special education local plan areas that  
 22 have revised their local plans pursuant to Section 56836.03 shall  
 23 meet the requirements of subdivision ~~(a)~~ (b).

24 SEC. 3. Section 48853 is added to the Education Code, to  
 25 read:

26 48853. (a) A pupil placed in a licensed children's institution  
 27 or foster family home shall attend programs operated by the local  
 28 educational agency, unless the pupil has an individual education  
 29 plan requiring placement in a nonpublic, nonsectarian school or  
 30 agency.

31 (b) Before any decision is made to place a pupil in a juvenile  
 32 court school as defined by Section 48645.1, the parent or guardian,  
 33 or the person holding the right to make educational decisions for  
 34 the pupil pursuant to Section 361 or 726 of the Welfare and  
 35 Institutions Code or Section 56055, shall first consider placement  
 36 in the regular public school. Any dispute between the person  
 37 holding the right to make educational decisions for the pupil and  
 38 the attorney of the pupil, court-appointed special advocate, care  
 39 provider, or placing agency regarding the educational plan or  
 40 placement of the pupil in a juvenile court school may be brought

1 to the juvenile court for resolution. In all instances, educational  
2 and school placement decisions shall be based on the best interests  
3 of the child.

4 (c) If any dispute arises as to the school placement of a pupil  
5 subject to this section, the pupil has the right to remain in his or her  
6 current school pending resolution of the dispute.

7 SEC. 4. Section 48853.5 is added to the Education Code, to  
8 read:

9 48853.5. (a) This section applies to any foster youth who is  
10 the subject of a proceeding under Section 300 or 602 of the Welfare  
11 and Institutions Code.

12 (b) Each local educational agency shall designate a staff person  
13 as the educational liaison for foster youth. The liaison shall do both  
14 of the following:

15 (1) Ensure the proper placement, enrollment in school, and  
16 checkout from school of foster youth.

17 (2) Assist foster youth when transferring from one school to  
18 another or from one school district to another in assuring proper  
19 transfer of credits, records, and grades.

20 (c) (1) At the initial detention or placement, or any subsequent  
21 change in placement of a foster youth, the local educational agency  
22 serving the foster youth shall allow the foster youth to continue his  
23 or her education in the school of origin for the duration of the  
24 academic school year.

25 (2) The liaison, in consultation with and the agreement of the  
26 foster youth and the person holding the right to make educational  
27 decisions for the youth may, in accordance with the youth's best  
28 interest, waive the youth's right to attend the school of origin and  
29 enroll the youth in any public school that pupils living in the  
30 attendance area in which the youth resides are eligible to attend.

31 (3) The State Department of Education and the local  
32 educational agencies shall adopt policies and practices to ensure  
33 that transportation is provided at the request of the liaison, in  
34 consultation with and the agreement of the foster youth and the  
35 person holding the right to make educational decisions for the  
36 youth, to and from the school of origin, in accordance with the  
37 following, as applicable:

38 (A) If the foster youth continues to live in the area served by the  
39 local educational agency in which the school of origin is located,  
40 the youth's transportation to and from the school of origin shall be

1 provided or arranged by the local educational agency in which the  
2 school of origin is located.

3 (B) If the foster youth is living outside the jurisdiction of the  
4 local educational agency of the school of origin, the local  
5 educational agency with jurisdiction of the area in which the youth  
6 is living and the local educational agency of the school of origin  
7 shall agree upon a method to apportion the responsibility and costs  
8 for providing the youth with transportation to and from the school  
9 of origin. If the local educational agencies are unable to agree upon  
10 the method of apportionment, the responsibility and costs for  
11 transportation shall be shared equally.

12 (4) Prior to making any recommendation to move a foster  
13 youth from his or her school of origin, the liaison shall provide the  
14 youth and the person holding the right to make educational  
15 decisions for the youth with a written explanation stating the basis  
16 for the recommendation and how this recommendation serves the  
17 youth's best interest.

18 (5) (A) If the liaison in consultation with the foster youth and  
19 the person holding the right to make educational decisions for the  
20 youth agree that the best interests of the youth would be served by  
21 his or her transfer to a school other than the school of origin, the  
22 youth shall immediately be enrolled in the new school.

23 (B) The local educational agency with jurisdiction over the  
24 new school shall immediately enroll the foster youth even if the  
25 youth is unable to produce records or clothing normally required  
26 for enrollment, such as a school uniform, previous academic  
27 records, medical records, proof of residency, or other  
28 documentation.

29 (C) The liaison for the enrolling school shall, within two  
30 business days of the youth's request for enrollment, contact the  
31 school last attended by the youth to obtain all academic and other  
32 records. The school liaison for the school last attended shall  
33 provide all records to the enrolling school within two business  
34 days of receiving the request.

35 (6) If any dispute arises as to the school placement of a foster  
36 youth, the youth has the right to remain in the school of origin  
37 pending resolution of the dispute.

38 (d) For purposes of this section, "school of origin" means the  
39 school that the foster youth attended when permanently housed or  
40 the school in which the youth was last enrolled.



1 SEC. 5. Section 49069.5 of the Education Code is amended  
2 to read:

3 49069.5. (a) The Legislature finds and declares that the  
4 mobility of pupils in foster care often disrupts their educational  
5 experience. The Legislature also finds that efficient *transfer*  
6 *procedures and* transfer of pupil records is a critical factor in the  
7 swift placement of foster children in educational settings.

8 ~~(b) Upon the request of a county social service or probation~~  
9 ~~department, a regional center for the developmentally disabled, or~~  
10 ~~other placing agency, a local education agency with which a pupil~~  
11 ~~in foster care has most recently been enrolled that has been~~  
12 ~~informed of the next educational placement of the pupil shall~~  
13 ~~cooperate with the county social service or probation department~~  
14 ~~to ensure that the pupil's education record is transferred to the~~  
15 ~~receiving local education agency in a timely manner.~~

16 ~~(c) Whenever a local educational agency with which a pupil in~~  
17 ~~foster care has most recently been enrolled is informed of the next~~  
18 ~~educational placement of the pupil, that local educational agency~~  
19 ~~shall cooperate with the county social service or probation~~  
20 ~~department to ensure that educational background information for~~  
21 ~~that pupil's health and educational record, as described in Section~~  
22 ~~16010 of the Welfare and Institutions Code, is transferred to the~~  
23 ~~receiving local educational agency in a timely manner.~~

24 ~~(d) Information provided pursuant to subdivision (c) of this~~  
25 ~~section shall include, but not be limited to the following:~~

26 ~~(1) The location of the pupil's records.~~

27 ~~(2) The last school and teacher of the pupil.~~

28 ~~(3) The pupil's current grade level.~~

29 ~~(4) Any information deemed necessary to enable enrollment at~~  
30 ~~the receiving school, to the extent allowable under state and federal~~  
31 ~~law.~~

32 ~~(e) Notice shall be made within five working days and~~  
33 ~~information transferred within five additional working days of~~  
34 ~~receipt of information regarding the new educational placement of~~  
35 ~~the pupil in foster care. The proper and timely transfer between~~  
36 ~~schools of a pupil in foster care that are in out of home care is the~~  
37 ~~responsibility of both the local educational agency and the county~~  
38 ~~social service or probation department.~~

39 ~~(c) As soon as the social worker or probation officer becomes~~  
40 ~~aware of the need to transfer a pupil in foster care out of his or her~~



1 *current school, the social worker or probation officer shall contact*  
2 *the appropriate person at the local educational agency of the*  
3 *pupil. The social worker or probation officer shall notify the local*  
4 *educational agency that the pupil will be leaving the school and*  
5 *request that the pupil be transferred out. No later than two business*  
6 *days after the initial request, the social worker or probation officer*  
7 *shall retrieve the appropriate educational information and school*  
8 *records and immediately forward the information and records to*  
9 *the next educational placement of the pupil.*

10 *(d) Upon receiving a transfer request from a social worker or*  
11 *probation officer, the local educational agency shall, within two*  
12 *business days, transfer the pupil out of school and deliver the*  
13 *educational information and records of the pupil to the requesting*  
14 *party.*

15 *(e) As part of the transfer process described under subdivision*  
16 *(d), the local educational agency shall compile the complete*  
17 *educational record of the pupil including a determination of seat*  
18 *time, credits earned, current classes and grades, immunization*  
19 *records, and, if appropriate, a copy of the pupil's plan adopted*  
20 *pursuant to Section 504 of the federal Rehabilitation Act of 1973*  
21 *(29 U.S.C. Sec. 794 et seq.) or individual education plan adopted*  
22 *pursuant to the federal Individuals with Disabilities Education Act*  
23 *(20 U.S.C. Sec. 1400 et seq.).*

24 *(f) The local educational agency shall assign the duties listed*  
25 *in this section to a person competent to handle the transfer*  
26 *procedure and aware of the specific educational record keeping*  
27 *needs of homeless, foster, and other transient children who transfer*  
28 *between schools.*

29 *(g) The local educational agency shall ensure that if the pupil*  
30 *in foster care is absent from school due to a decision to change the*  
31 *placement of a pupil made by a court or placing agency, the grades*  
32 *and credits of the pupil will be calculated as of the date the pupil*  
33 *left school, and no lowering of grades will occur as a result of the*  
34 *absence of the pupil under these circumstances.*

35 SEC. 6. Section 49076 of the Education Code is amended to  
36 read:

37 49076. A school district is not authorized to permit access to  
38 pupil records to any person without written parental consent or  
39 under judicial order except that:

(a) Access to those particular records relevant to the legitimate educational interests of the requester shall be permitted to the following:

(1) School officials and employees of the district, members of a school attendance review board appointed pursuant to Section 48321, and any volunteer aide, 18 years of age or older, who has been investigated, selected, and trained by a school attendance review board for the purpose of providing followup services to ~~students~~ *pupils* referred to the school attendance review board, provided that the person has a legitimate educational interest to inspect a record.

(2) Officials and employees of other public schools or school systems, including local, county, or state correctional facilities where educational programs leading to high school graduation are provided; *or* where the pupil intends to or is directed to enroll, subject to the rights of parents as provided in Section 49068.

(3) Authorized representatives of the Comptroller General of the United States, the Secretary of Education, and administrative head of an education agency, state education officials, or their respective designees, or the United States Office of Civil Rights, where the information is necessary to audit or evaluate a state or federally supported education program or pursuant to a federal or state law, provided that except when collection of personally identifiable information is specifically authorized by federal law, any data collected by those officials shall be protected in a manner which will not permit the personal identification of students or their parents by other than those officials, and any personally identifiable data shall be destroyed when no longer needed for the audit, evaluation, and enforcement of federal legal requirements.

(4) Other state and local officials to the extent that information is specifically required to be reported pursuant to state law adopted prior to November 19, 1974.

(5) Parents of a pupil 18 years of age or older who is a dependent as defined in Section 152 of the Internal Revenue Code of 1954.

(6) A pupil 16 years of age or older or having completed the 10th grade who requests access.

(7) Any district attorney who is participating in or conducting a truancy mediation program pursuant to Section 48263.5, or Section 601.3 of the Welfare and Institutions Code, or

1 participating in the presentation of evidence in a truancy petition  
2 pursuant to Section 681 of the Welfare and Institutions Code.

3 (8) A prosecuting agency for consideration against a parent or  
4 guardian for failure to comply with the Compulsory Education  
5 Law (Chapter 2 (commencing with Section 48200) of Part 27 of  
6 ~~Division 4 of Title 2~~) 27) or with Compulsory Continuation  
7 Education (Chapter 3 (commencing with Section 48400) of Part  
8 ~~27 of Division 4 of Title 2~~) 27).

9 (9) Any probation officer or district attorney for the purposes  
10 of conducting a criminal investigation or an investigation in  
11 regards to declaring a person a ward of the court or involving a  
12 violation of a condition of probation.

13 (10) Any judge or probation officer for the purpose of  
14 conducting a truancy mediation program for a pupil, or for  
15 purposes of presenting evidence in a truancy petition pursuant to  
16 Section 681 of the Welfare and Institutions Code. The judge or  
17 probation officer shall certify in writing to the school district that  
18 the information will be used only for truancy purposes. A school  
19 district releasing pupil information to a judge or probation officer  
20 pursuant to this paragraph shall inform, or provide written  
21 notification to, the parent or guardian of the pupil within 24 hours  
22 of the release of the information.

23 *(11) Any social worker for the purpose of conducting an*  
24 *investigation pursuant to Section 300 of the Welfare and*  
25 *Institutions Code or preparing a case plan or court report required*  
26 *by law.*

27 (b) School districts may release information from pupil records  
28 to the following:

29 (1) Appropriate persons in connection with an emergency if the  
30 knowledge of the information is necessary to protect the health or  
31 safety of a student or other persons.

32 (2) Agencies or organizations in connection with a student's ~~the~~  
33 application of a pupil for, or receipt of, financial aid. However,  
34 information permitting the personal identification of ~~students a~~  
35 pupil or ~~their~~ his or her parents may be disclosed only as may be  
36 necessary for purposes as to determine the eligibility of the pupil  
37 for financial aid, to determine the amount of the financial aid, to  
38 determine the conditions which will be imposed regarding the  
39 financial aid, or to enforce the terms or conditions of the financial  
40 aid.

1 (3) The county elections official, for the purpose of identifying  
2 ~~students~~ *pupils* eligible to register to vote, and for conducting  
3 programs to offer ~~students~~ *pupils* an opportunity to register to vote.  
4 The information, however, shall not be used for any other purpose  
5 or given or transferred to any other person or agency.

6 (4) Accrediting associations in order to carry out their  
7 accrediting functions.

8 (5) Organizations conducting studies for, or on behalf of,  
9 educational agencies or institutions for the purpose of developing,  
10 validating, or administering predictive tests, administering student  
11 aid programs, and improving instruction, if the studies are  
12 conducted in a manner that will not permit the personal  
13 identification of ~~students~~ *pupils* or their parents by persons other  
14 than representatives of the organizations and the information will  
15 be destroyed when no longer needed for the purpose for which it  
16 is obtained.

17 (6) Officials and employees of private schools or school  
18 systems where the pupil is enrolled or intends to enroll, subject to  
19 the rights of parents as provided in Section 49068. This  
20 information shall be in addition to the pupil's permanent record  
21 transferred pursuant to Section 49068.

22 ~~No~~ A person, persons, agency, or organization permitted access  
23 to pupil records pursuant to this section ~~shall~~ *may not* permit access  
24 to any information obtained from those records by any other  
25 person, persons, agency, or organization without the written  
26 consent of the pupil's parent. However, this paragraph ~~shall~~ *does*  
27 ~~not be construed as requiring~~ *require* prior parental consent when  
28 information obtained pursuant to this section is shared with other  
29 persons within the educational institution, agency, or organization  
30 obtaining access, so long as those persons have a legitimate interest  
31 in the information.

32 (c) Notwithstanding any other provision of law, any school  
33 district, including any county office of education or  
34 superintendent of schools, may participate in an interagency data  
35 information system that permits access to a computerized data  
36 base system within and between governmental agencies or  
37 districts as to information or records which are nonprivileged, and  
38 where release is authorized as to the requesting agency under state  
39 or federal law or regulation, ~~as long as if~~ *if* each of the following  
40 requirements are met:

1 (1) Each agency and school district shall develop security  
2 procedures or devices by which unauthorized personnel cannot  
3 access data contained in the system.

4 (2) Each agency and school district shall develop procedures or  
5 devices to secure privileged or confidential data from  
6 unauthorized disclosure.

7 (3) Each school district shall comply with the access log  
8 requirements of Section 49064.

9 (4) The right of access granted shall not include the right to add,  
10 delete, or alter data without the written permission of the agency  
11 holding the data.

12 (5) ~~No~~ An agency or school district may *not* make public or  
13 otherwise release information on an individual contained in the  
14 data base where the information is protected from disclosure or  
15 release as to the requesting agency by state or federal law or  
16 regulation.

17 SEC. 7. Section 361 of the Welfare and Institutions Code is  
18 amended to read:

19 361. (a) In all cases in which a minor is adjudged a dependent  
20 child of the court on the ground that the minor is a person described  
21 by Section 300, the court may limit the control to be exercised over  
22 the dependent child by any parent or guardian and shall by its order  
23 clearly and specifically set forth all those limitations. Any  
24 limitation on the right of the parent or guardian to make  
25 educational decisions for the child shall be specifically addressed  
26 in the court order. The limitations may not exceed those necessary  
27 to protect the child. ~~Whenever~~ If the court specifically limits the  
28 right of the parent or guardian to make educational decisions for  
29 the child, the court shall at the same time appoint a responsible  
30 adult to make educational decisions for the child until one of the  
31 following occurs:

32 (1) The minor reaches 18 years of age, unless the child chooses  
33 not to make educational decisions for himself or herself, or is  
34 deemed by the court to be incompetent.

35 (2) Another responsible adult is appointed to make educational  
36 decisions for the minor pursuant to this section.

37 (3) The right of the parent or guardian to make educational  
38 decisions for the minor is fully restored.

39 (4) A successor guardian or conservator is appointed.

(5) The child is placed into long-term foster care pursuant to paragraph (3) of subdivision (g) of Section 366.21, Section 366.22, or Section 366.26, at which time the foster parent shall have the right to represent the child in educational matters pursuant to Section 56055 of the Education Code.

An individual who would have a conflict of interest in representing the child may not be appointed to make educational decisions. For purposes of this section, “an individual who would have a conflict of interest,” means a person having any interests that might restrict or bias his or her ability to make educational decisions, including, but not limited to, those conflicts of interest prohibited by Section 1126 of the Government Code, and the receipt of compensation or attorneys’ fees for the provision of services pursuant to this section. A foster parent may not be deemed to have a conflict of interest solely because he or she receives compensation for the provision of services pursuant to this section.

*Any dispute between the person appointed to make educational decisions for the child and the attorney, court-appointed special advocate, care provider, or placing agency of the child regarding the educational plan or placement of the child may be resolved by the court. If the court is unable to appoint a responsible adult to make educational decisions for the child, the court may, with input from any interested persons, make decisions regarding the educational plan or placement of the child. All educational decisions shall seek to ensure that the child is in the least restrictive educational program and has access to the same academic resources and services that are available to all pupils. In all instances, educational and school placement decisions shall be based on the best interests of the child.*

(b) Subdivision (a) ~~may does not be construed to~~ limit the ability of a parent to voluntarily relinquish his or her child to the State Department of Social Services or to a licensed county adoption agency at any time while the child is a dependent child of the juvenile court, if the department or agency is willing to accept the relinquishment.

(c) A dependent child may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the



1 juvenile court finds clear and convincing evidence of any of the  
2 following:

3 (1) There is a substantial danger to the physical health, safety,  
4 protection, or physical or emotional well-being of the minor or  
5 would be if the minor were returned home, and there are no  
6 reasonable means by which the minor's physical health can be  
7 protected without removing the minor from the minor's parents'  
8 or guardians' physical custody. The fact that a minor has been  
9 adjudicated a dependent child of the court pursuant to subdivision  
10 (e) of Section 300 shall constitute prima facie evidence that the  
11 minor cannot be safely left in the custody of the parent or guardian  
12 with whom the minor resided at the time of injury. The court shall  
13 consider, as a reasonable means to protect the minor, the option of  
14 removing an offending parent or guardian from the home. The  
15 court shall also consider, as a reasonable means to protect the  
16 minor, allowing a nonoffending parent or guardian to retain  
17 custody as long as that parent or guardian presents a plan  
18 acceptable to the court demonstrating that he or she will be able to  
19 protect the child from future harm.

20 (2) The parent or guardian of the minor is unwilling to have  
21 physical custody of the minor, and the parent or guardian has been  
22 notified that if the minor remains out of their physical custody for  
23 the period specified in Section 366.25 or 366.26, the minor may  
24 be declared permanently free from their custody and control.

25 (3) The minor is suffering severe emotional damage, as  
26 indicated by extreme anxiety, depression, withdrawal, or  
27 untoward aggressive behavior toward ~~self~~ *himself or herself* or  
28 others, and there are no reasonable means by which the minor's  
29 emotional health may be protected without removing the minor  
30 from the physical custody of his or her parent or guardian.

31 (4) The minor or a sibling of the minor has been sexually  
32 abused, or is deemed to be at substantial risk of being sexually  
33 abused, by a parent, guardian, or member of his or her household,  
34 or other person known to his or her parent, and there are no  
35 reasonable means by which the minor can be protected from  
36 further sexual abuse or a substantial risk of sexual abuse without  
37 removing the minor from his or her parent or guardian, or the  
38 minor does not wish to return to his or her parent or guardian.

39 (5) The minor has been left without any provision for his or her  
40 support, or a parent who has been incarcerated or institutionalized



1 cannot arrange for the care of the minor, or a relative or other adult  
2 custodian with whom the child has been left by the parent is  
3 unwilling or unable to provide care or support for the child and the  
4 whereabouts of the parent is unknown and reasonable efforts to  
5 locate him or her have been unsuccessful.

6 (d) The court shall make a determination as to whether  
7 reasonable efforts were made to prevent or to eliminate the need  
8 for removal of the minor from his or her home or, if the minor is  
9 removed for one of the reasons stated in paragraph (5) of  
10 subdivision (c), whether it was reasonable under the circumstances  
11 not to make any of those efforts. The court shall state the facts on  
12 which the decision to remove the minor is based.

13 (e) The court shall make all of the findings required by  
14 subdivision (a) of Section 366 in either of the following  
15 circumstances:

16 (1) The minor has been taken from the custody of his or her  
17 parent or guardian and has been living in an out-of-home  
18 placement pursuant to Section 319.

19 (2) The minor has been living in a voluntary out-of-home  
20 placement pursuant to Section 16507.4.

21 SEC. 8. Section 726 of the Welfare and Institutions Code is  
22 amended to read:

23 726. (a) In all cases in which a minor is adjudged a ward or  
24 dependent child of the court, the court may limit the control to be  
25 exercised over the ward or dependent child by any parent or  
26 guardian and shall in its order, clearly and specifically set forth all  
27 those limitations, but no ward or dependent child shall be taken  
28 from the physical custody of a parent or guardian, unless upon the  
29 hearing the court finds one of the following facts:

30 (1) That the parent or guardian is incapable of providing or has  
31 failed or neglected to provide proper maintenance, training, and  
32 education for the minor.

33 (2) That the minor has been tried on probation while in custody  
34 and has failed to reform.

35 (3) That the welfare of the minor requires that custody be taken  
36 from the minor's parent or guardian.

37 (b) Whenever the court specifically limits the right of the  
38 parent or guardian to make educational decisions for the minor, the  
39 court shall at the same time appoint a responsible adult to make

educational decisions for the child until one of the following occurs:

(1) The minor reaches 18 years of age, unless the child chooses not to make educational decisions for himself or herself, or is deemed by the court to be incompetent.

(2) Another responsible adult is appointed to make educational decisions for the minor pursuant to this section.

(3) The right of the parent or guardian to make educational decisions for the minor is fully restored.

(4) A successor guardian or conservator is appointed.

(5) The child is placed into long-term foster care pursuant to paragraph (3) of subdivision (g) of Section 366.21, Section 366.22, or Section 366.26, at which time the foster parent shall have the right to represent the child in educational matters pursuant to Section 56055 of the Education Code.

An individual who would have a conflict of interest in representing the child, as specified under federal regulations, may not be appointed to make educational decisions. For purposes of this section, “an individual who would have a conflict of interest,” means a person having any interests that might restrict or bias his or her ability to make educational decisions, including, but not limited to, those conflicts of interest prohibited by Section 1126 of the Government Code, and the receipt of compensation or attorneys’ fees for the provision of services pursuant to this section. A foster parent may not be deemed to have a conflict of interest solely because he or she receives compensation for the provision of services pursuant to this section.

*Any dispute between the person appointed to make educational decisions for the child and the attorney, court-appointed special advocate, care provider, or placing agency of the child regarding the educational plan or placement of the child may be resolved by the court. If the court is unable to appoint a responsible adult to make educational decisions for the child, the court may, with input from any interested persons, make decisions regarding the education plan or placement of the child. All educational decisions shall seek to ensure that the child is in the least restrictive educational program and has access to the same academic resources and services that are available to all pupils. In all instances, educational and school placement decisions shall be based on the best interests of the child.*

1 (c) ~~In any case in which~~ If the minor is removed from the  
2 physical custody of his or her parent or guardian as the result of an  
3 order of wardship made pursuant to Section 602, the order shall  
4 specify that the minor may not be held in physical confinement for  
5 a period in excess of the maximum term of imprisonment which  
6 could be imposed upon an adult convicted of the offense or  
7 offenses which brought or continued the minor under the  
8 jurisdiction of the juvenile court.

9 As used in this section and in Section 731, “maximum term of  
10 imprisonment” means the longest of the three time periods set  
11 forth in paragraph (2) of subdivision (a) of Section 1170 of the  
12 Penal Code, but without the need to follow the provisions of  
13 subdivision (b) of Section 1170 of the Penal Code or to consider  
14 time for good behavior or participation pursuant to Sections 2930,  
15 2931, and 2932 of the Penal Code, plus enhancements which must  
16 be proven if pled.

17 If the court elects to aggregate the period of physical  
18 confinement on multiple counts or multiple petitions, including  
19 previously sustained petitions adjudging the minor a ward within  
20 Section 602, the “maximum term of imprisonment” shall be the  
21 aggregate term of imprisonment specified in subdivision (a) of  
22 Section 1170.1 of the Penal Code, which includes any additional  
23 term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1  
24 of the Penal Code, and Section 11370.2 of the Health and Safety  
25 Code.

26 If the charged offense is a misdemeanor or a felony not included  
27 within the scope of Section 1170 of the Penal Code, the  
28 “maximum term of imprisonment” is the longest term of  
29 imprisonment prescribed by law.

30 “Physical confinement” means placement in a juvenile hall,  
31 ranch, camp, forestry camp or secure juvenile home pursuant to  
32 Section 730, or in any institution operated by the Youth Authority.

33 ~~Nothing in this~~ This section shall be construed to does not limit  
34 the power of the court to retain jurisdiction over a minor and to  
35 make appropriate orders pursuant to Section 727 for the period  
36 permitted by Section 607.

37 SEC. 9. Section 16000 of the Welfare and Institutions Code  
38 is amended to read:

39 16000. (a) It is the intent of the Legislature to preserve and  
40 strengthen a child’s family ties whenever possible, removing the

child from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public. ~~In any case in which~~ If a child is removed from the physical custody of his or her parents, preferential consideration shall be given whenever possible to the placement of the child with the relative as required by Section 7950 of the Family Code. ~~When~~ If the child is removed from his or her own family, it is the purpose of this chapter to secure as nearly as possible for the child the custody, care, and discipline equivalent to that which should have been given to the child by his or her parents. It is further the intent of the Legislature to reaffirm its commitment to children who are in out-of-home placement to live in the least restrictive, most familylike setting and to live as close to the child's family as possible pursuant to subdivision (c) of Section 16501.1. Family reunification services shall be provided for expeditious reunification of the child with his or her family, as required by law. If reunification is not possible or likely, a permanent alternative shall be developed.

*(b) It is further the intent of the Legislature to ensure that all pupils in foster care and those who are homeless as defined by the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.) have the opportunity to meet the same challenging state pupil academic achievement standards to which all pupils are held. In fulfilling their responsibilities to pupils in foster care, educators, placing agencies, care providers, advocates, and the juvenile courts shall work together to ensure that each pupil is placed in the least restrictive educational program, and has access to the same academic resources and services that are available to all pupils. In all instances, educational and school placement decisions must be based on the best interests of the child.*

SEC. 10. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000),

- 1 reimbursement shall be made from the State Mandates Claims
- 2 Fund.

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